

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEDRO GOMEZ-ORTEGA,
Petitioner/Defendant,
vs.
UNITED STATES OF AMERICA,
Respondent/Plaintiff.

CASE NO. 12cr1001/12cv2033-LAB
**ORDER DENYING 28 U.S.C.
§ 2255 HABEAS MOTION**

Pursuant to a plea agreement, Petitioner/Defendant Pedro Gomez-Ortega pleaded guilty to one count of attempted entry after deportation, in violation of 8 U.S.C. § 1326. On July 30, 2012, the Court sentenced him to 18 months' imprisonment plus three years' supervised release and a \$100 assessment. Then on August 16, Gomez-Ortega filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255.

The petition is virtually an exact boilerplate duplicate of one this Court has rejected on many occasions as meritless; only the case-specific information such as Gomez-Ortega's name and the case number have been typed in. These claims have no more merit now than on the many other occasions when they were raised and rejected before. See, e.g., *Rendon-Inzunza v. United States*, 2010 WL 3076271 (S.D.Cal., Aug. 6, 2010).

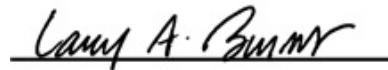
Furthermore, Gomez-Ortega waived appeal and collateral attack, provided he was not given a custodial sentence above the high end of the guideline range recommended by the government pursuant to his plea agreement. (See Docket no. 13 at 9:24-3 (Plea

1 agreement.) A comparison of his plea agreement and the government's sentencing
2 memorandum show the government followed the plea agreement in recommending a
3 guideline range of 12 to 18 months. (Compare Docket no. 13 at 7:11-28 (provisions of plea
4 agreement) *with* Docket no. 23 (government's sentencing memorandum).) It also bears
5 mentioning that Gomez-Ortega's own sentencing summary chart agreed with the
6 government that the guideline range was 12 to 18 months. (See Docket no. 24.) Because
7 Gomez-Ortega was not given a custodial sentence greater than the high end of the guideline
8 range, he waived collateral attack.

9 The motion is **DENIED**.

10 **IT IS SO ORDERED.**

11 DATED: August 20, 2012

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13 **HONORABLE LARRY ALAN BURNS**
United States District Judge

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